IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Bail Appl..No. 7436 of 2007()

CRIME NO.214/07 OF BALARAMAPURAM POLICE STATION

: APPLICANT/3RD ACCUSED

SHABU, AGED 23, S/O.BABU, THAVARAKODU,
PARUMANVILAKOM PUTHEN VEEDU, RUSSELPURAM P.O.
BALARAMAPURAM, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.R.V.SREEJITH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7436 of 2007

Dated this the 4th day of December 2007

O R D E R

Application for anticipatory bail. The petitioner is the third accused in a crime registered for offences punishable inter alia under Sections 326 and 307 I.P.C. The alleged incident took place on 13/6/2007 at about 9 p.m on a public road. The accused persons, four in number, in furtherance of their common intention allegedly attacked the victim/ de facto complainant with dangerous weapons - sword and iron rod. Two of the accused wielded the weapons. Others did not wield any weapon. They allegedly shared common intention with other accused. They had come together to the scene of the crime to indulge in the crime. First accused has been arrested. In the F.I.R only the first accused was named. The other three accused have been brought on the array of the accused only later. The first accused has been arrested and subsequently enlarged on bail. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is prayed that anticipatory bail may be granted to the petitioner subject to appropriate terms and conditions.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no features in this case which can justify or warrant the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. No circumstances justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C are shown to exist. The mere fact that the petitioner had not wielded any weapon or that he was not named in the F.I.R is according to me insufficient to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007